

# UNIONS AS ORGANIZED 'Strip' Clubs

BY JUDD LEES

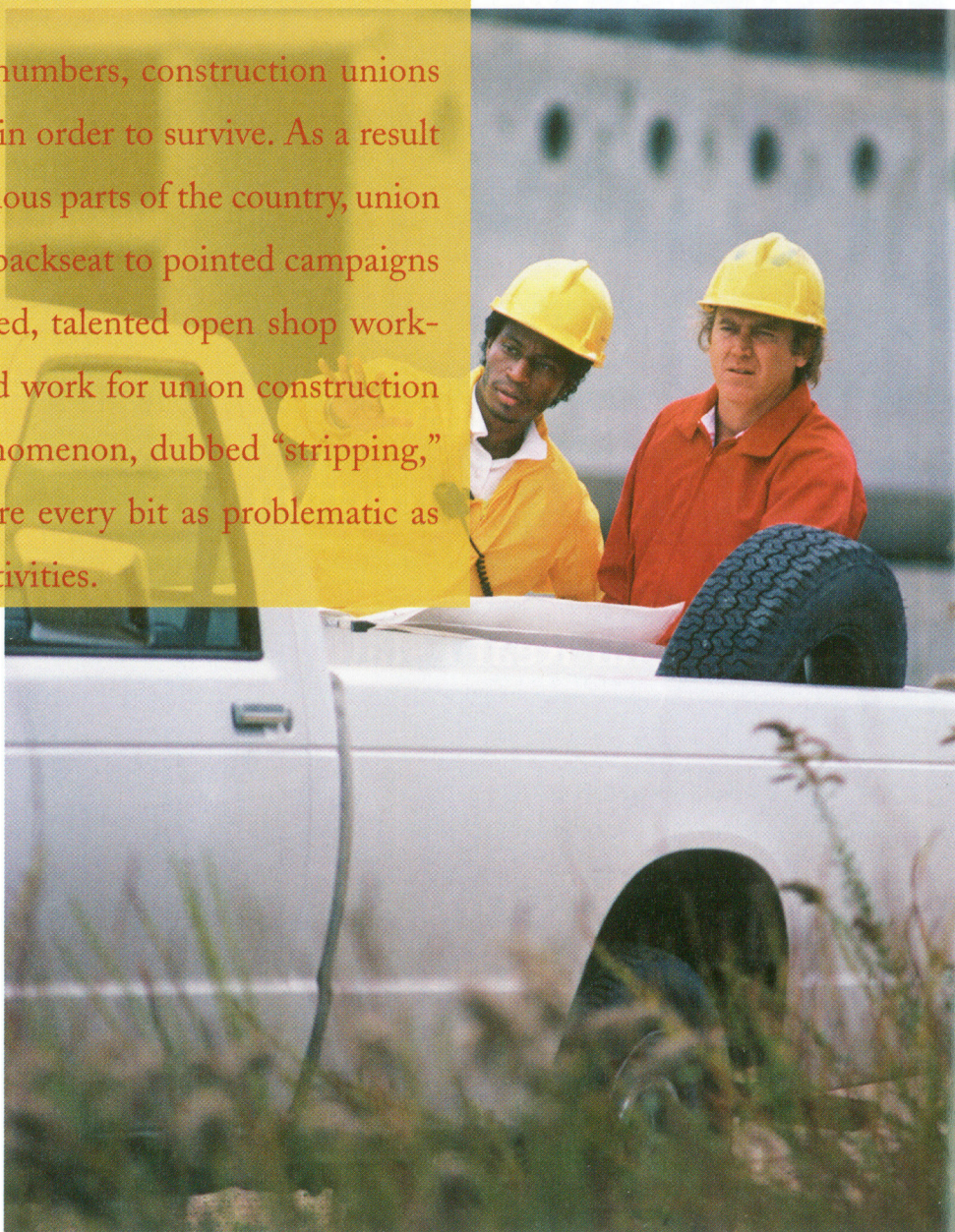
**D**espite shrinking membership numbers, construction unions have shown an ability to adapt in order to survive. As a result of the construction boom in various parts of the country, union organizing drives have taken a backseat to pointed campaigns that try to convince well-trained, talented open shop workers to leave their employers and work for union construction companies. This growing phenomenon, dubbed "stripping," raises unique challenges that are every bit as problematic as traditional union organizing activities.

Open shop employers should take practical steps before union business agents arrive at jobsites.

## THE 'STRIPPING' PHENOMENON

Stripping consists of concerted efforts by unions to convince open shop employees to leave their current employers to work for competing union contractors. "Strippers" typically take two forms. Most are union business agents who park outside of jobsites and discuss union employer openings with open shop employees entering and leaving the jobsite. Increasingly, however, these agents are employees of open shop contractors who—after failing to convince employees to support organizing efforts—shift their sales pitch to convince employees to leave their current employer for "better" pay and benefits at competing union contractors.

One reason for the popularity of this phenomenon is that unions increasingly face demands from union contractors for a plentiful and well-trained workforce. This



short-term need is met by enticing employees from open shop contractors to take available positions with union contractors.

Stripping also is intended to cripple the ability of open shop contractors to com-

plete contracted-for work by depriving them of well-trained employees, including supervisors.

Additionally, when faced with the resulting short-term manpower shortages,

open shop contractors may abandon well-crafted hiring policies relying on references and internal referrals. This makes them ideal candidates for union salting campaigns in which references go unchecked and mass applications are reviewed and considered. Even if smart open shop contractors refuse to fall into this trap, unions can still file charges with the National Labor Relations Board (NLRB) and allege that the contractors clearly have a hiring need but did not accept applications in a discriminatory effort to avoid hiring union applicants.

Finally, successful stripping of journey-level employees often results in apprenticeship ratio violations which union agents duly report to state agencies.

**UNPROTECTED ACTIVITY**

The NLRB addressed stripping—or, more accurately, employee loyalty—in the 2002 case of *Abell Engineering & Manufacturing Inc.* In the case, the NLRB held that stripping was not a protected activity under the National Labor Relations Act (NLRA). However, the NLRB noted its decision was based on the specific facts of the case, including the undisputed fact

that the employee stripper had ceased all organizing efforts before commencing this activity and that the activity, if successful, would reduce a three-person welder/fabricator unit to a single employee, potentially crippling the operation.

In a footnote, the NLRB cited several cases involving lawful inducements by union salts to encourage employees to seek higher union pay and benefits or apprentice registration in the union program because the solicited employees arguably could attain these benefits while still employed by their current employer. The key distinction in the *Abell* holding was the request to leave the employer.

**RECOMMENDED EMPLOYER RESPONSES**

If the stripper is a business agent, contractors must ensure that lawful private property rules are being followed and that non-discriminatory jobsite access rules are in place. If the stripper is a current employee, termination may be available and appropriate if it is clear the employee is requesting that fellow employees terminate their employment.

If, on the other hand, the solicitation consists of pointing out competitor wage

rates and fringe benefits, the *Abell* decision suggests this activity is protected because those wage rates could be obtained while remaining at the current employer. A direct request to quit must occur.

With regard to the employee-audience of the stripper, the NLRA's protections may still apply even if the conduct of the stripper is unprotected. For example, an open shop employer's surveillance or questioning of employees as they enter and exit the jobsite may violate the act. In *Abell*, the solicited employee volunteered the content of the solicitation to the employer.

In addition, employer announcements that employees who leave will not be hired back may constitute unlawful threats of discriminatory conduct based on union status.

Regardless of the identity of the stripper, open shop contractors, as in any salting campaign, should take immediate affirmative steps to discuss the competitiveness of their wage rates and fringe benefits to convince employees to ignore union persuasions. Whether employers can promise increased wages or benefits in direct response to a stripping campaign raises a legal question, as this may constitute an unlawful promise.

Employers are on much stronger ground if they extend offers of higher wages directly to individual employees in an attempt to keep the employees from departing.

Long-term steps to ward off stripping campaigns include periodic review of the competitiveness of wage and fringe benefits packages and regular meetings with employees to discuss the employer's competitiveness. Jobsite access rules also should be reviewed on a periodic basis to ensure that third-party business agents are not entering jobsites without permission or a legal right.

Contractors should especially reach out to their minority workers, who are a prime solicitation target for strippers. Communication gaps must be bridged, and compensation and fringe benefit inequities corrected.

Then, if and when strippers attempt to entice open shop employees, their sales pitch will fall on deaf ears.

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